

### REMARKS

Claims 1 and 9 have been amended and claims 2 and 10 have been cancelled. Claims 1, 3-9 and 11-45 remain pending, with claims 4-8, 11-27 and 31-45 currently withdrawn from consideration.

Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented, and Applicants reserve the right to prosecute the subject matter of such claims in continuation and/or divisional applications.

Applicants wish to thank the Examiner for the courtesy of a telephonic interview conducted with Applicant's undersigned representative on March 15, 2004, during which the claims and cited references were discussed.

#### Restriction Requirement/Election of Species

Applicants acknowledge the restriction requirement has been maintained. With respect to the election of species requirement, Applicants further acknowledge that claims to additional species will be entitled to consideration upon allowance of a generic claim.

#### Drawings

The drawings have been objected to under 37 CFR § 1.84(p)(5) on the grounds that they do not include reference sign(s) not mentioned in the specification, specifically reference sign(s) 110 and 99. The specification has been amended to remove reference 110. Corrected drawings are submitted herewith that include reference sign 99, and approval of the corrected drawings is requested. Applicants believe the drawings are now in compliance with 37 CFR § 1.84(p)(5).

#### Rejection under 35 U.S.C. §102

Claims 1-3 and 9-10 have been rejected under 35 U.S.C. 102(b) as being anticipated by Kantrowitz et al. (US 4,051,840). Claims 1 and 9 have been amended to overcome the rejection.

Krantowitz has nothing to do with the claimed invention of space-occupying devices deployable in a patient's stomach. Rather, Kantrowitz et al. is directed to a dynamic aortic patch that is surgically implanted in the thoracic aorta and is systematically inflated and deflated to generate pressure waves in the bloodstream. These generated pressure waves assist the heart by augmenting blood circulation. (See Abstract). The Krantowitz et al. dynamic aortic patch incorporates an inflatable bladder 10 that expands and deflates. (See e.g., Fig. 1; column 2, lines 44-57). The systematic inflation/deflation of the patch is accomplished by driving unit 36 which controls valve 34 coupled to fluid source 35. Valve 35 connects to supply tube 15 which provides a fluid path to the interior of inflatable bladder 10. (Column 3, line 20 et seq.). As can be seen in Fig. 5, valve 34, fluid source 35, driving unit and supply tube 15 are all located externally of the aorta.

Claims 1 and 9 by contrast have been amended to recite the feature of an "inflatable member member having an inflation valve, the inflatable member being further adapted for disposition entirely within the patient's stomach." The claimed inflatable member can be thus be entirely deployed within the stomach and inflated in-situ to the desired volume. This is not possible with the Kantrowitz et al. aortic patch which has a valve structure located outside the patient's body for continual systematic inflation/deflation.

Further, with respect to claim 9, Applicants note that the phrase "means for anchoring the device within the patient's stomach" is not merely a statement of intended use, as is asserted by the Examiner, but rather is a recited claim element that covers corresponding structure that achieves the recited function, in accordance with 35 U.S.C. §112, paragraph six.

Applicants submit claims 1 and 9, as well as claims depending therefrom, are neither taught nor suggested by Kantrowitz et al., and request withdrawal of the rejection.

*Rejection under 35 U.S.C. §103*

Claims 28-30 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Berson (US 4,246,893) in view of Kantrowitz et al. (US 4,051,840). Applicants respectfully traverse the rejection.

In making the rejection, the Examiner states at page 5 of the Office Action:

Regarding claim 28, Berson discloses a method of introducing a space-occupying device (element 2 with associated components) within the stomach of the patient via introducing the space-occupying device (element 2 with associated components) into the patient's stomach where the space-occupying device includes an expandable member (2). (emphasis added).

Applicants respectfully disagree with this characterization of Berson. Berson is directed to an apparatus that compresses a patient's stomach (see e.g. Abstract), it does not describe the methods of claims 28-30 wherein a space-occupying device is introduced into the stomach. As can be seen e.g. in Figs. 4-6 and as described e.g. at column 4, lines 52 et seq., Berson describes placement of a balloon 2 in the abdominal cavity in a position to bear against the stomach when inflated. Thus, Berson teaches away from the claimed methods that require introduction of the recited space-occupying device into the patient's stomach.

As discussed above, Kantrowitz et al. is directed to a dynamic aortic patch and contains no teaching or suggestion of introducing a space-occupying device into a patient's stomach.

Thus neither Berson nor Kantrowitz et al., either alone or in combination, teach or suggest the methods of claims 28-30. Applicants respectfully request withdrawal of the rejection as to these claims.


**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **514362000100**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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Attachments